

**JUN 28 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS S. HUGHES,

Defendant - Appellant.

No. 04-50122

D.C. No. CR-02-00937-NM-01

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Nora M. Manella, District Judge, Presiding

Argued and Submitted October 17, 2005  
Pasadena, California

Before: HUG, PREGERSON, and CLIFTON, Circuit Judges.

Thomas S. Hughes appeals his sentence, imposed following his guilty plea to three counts of securities fraud and one count of criminal contempt. The sentencing preceded the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). The sentence was thus imposed at a time when the district court

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

understandably believed the Sentencing Guidelines to be mandatory. *Booker* held otherwise, though. *See United States v. Ameline*, 409 F.3d 1073 (9th Cir.2005) (en banc). Since the sentence was based upon facts found by the judge rather than by a jury, and since the original sentencing judge is no longer available, due to Judge Manella's resignation from the district court, the sentence must be vacated and the case remanded for a full resentencing hearing. *See United States v. Sanders*, 421 F.3d 1044, 1052 (9th Cir. 2005).

**SENTENCE VACATED AND REMANDED.**